FIRST APPEAL NO.96 OF 1982

Date of decision: 7.3.1996

For Approval and Signature:

The Hon'ble Mr.Justice N.J.Pandya

The Hon'ble Mr.Justice A.R.Dave

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any o..

thereunder?

5. Whether it is to be circulated to the Civil Judge?

Mr.R.H.Mehta, L.A. for the appellant
Mr.P.B. Majmudar, L.A. for respondents 1/1 to 1/11
Respondents 2,3 & 4 served

Coram: N.J.Pandya & A.R.Dave,JJ.
7.3.1996

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ORAL JUDGMENT (Per N.J.Pandya,J.)

This appeal arises out of the judgment of the Motor Accident Claims Tribunal (Main) at Baroda delivered on 30-7-1981 in Claim Application No.119 of 1979.

2. The appellant is the Insurance Company, original

opponent no.3.

3. Initially, the stand of the Company was that the truck involved in the incident is not insured with it. The reason was that the truck involved in the incident has registration No.RJX 2665. The Company did have contract of Insurance in respect of a truck bearing registration No.MPI 3008. Lateron, when the Company was apprised of the fact that truck bearing registration No.MPI 3008 is the same as having registration No.RJX 2665, the Company took a stand that on account of unauthorised and unintimated transfer of the vehicle, its contract of insurance in respect of truck No.MPI 3008 had automatically come to an end. The truck involved in the incident originally belonged to respondent no.4 and it was sold by him to Smt.Sheelavedi Chaudhari and it was, during her ownership, that the incident took place. At the same time, it appears that in her written statement, opponent no.2 had given insurance particulars. The policy number thus given by her was 416810586. This has been produced on record with list exh.51. We have verified from the record that it is an original policy bearing that very number. However, the policy has been issued in the name of respondent no.4 and not in the name of respondent no.2.

4. The learned Judge, who gave the said judgment, seems to have been much vexed as to the representation of the diverse parties before him and the claimant and Advocate Mr.J.J.Shah and his Son seem to have entered into a unseemly controversy particularly with regard to the represention for and on behalf of the Insurance Company-appellant and the owner of the vehicle.

5. In the process what is lost sight of is the fact that policy under which alone the Company could have been made liable is forgotten to be exhibited. Not that the learned Judge was unaware of it because in para 5, it is the learned Judge himself who discusses that the alternative submission of the Company that if the policy is held to be subsisting the liability of the Company thereunder will be only to the extent of Rs.50,000/-. The submission is negatived only on the count that as the policy is not proved, the benefit thereof cannot be given to the Company.

6. If the policy is not proved, there is no question of contract of insurance being established and therefore, there could not have been a liability of the Insurance Company.

7. However, in view of the admitted position on record as to the transfer of vehicle before the incident and its registration Number having been changed, as stated above, and further that the Company was never intimated either by respondent no.4 or respondent no.2 as to the fact of transfer coupled with a request for accepting the transferee as an insurer, the case will directly be governed by Sec.103A of the Motor Vehicle Act.

8. Over and above this, strangely enough, when second policy issued by the Company which is the appellant before us, presumably by its Rajasthan office, which was sought to be produced by the appellant Insurance Company, it was the claimant who objected to its production and ironically it was that very learned Advocate who argued before the learned trial Judge at the time of final submission that the Company having special knowledge about the issuance of policy is withholding it. The said policy was issued on and from 4-1-1979 and it was to come to an end on 3rd January 1980. It was in respect of truck bearing registration No.RJX2665 issued at Chitodganj. It seems to have been issued in the name of the person who purchased the truck from said respondent no.2. It is her clear case that after the incident, the truck was transferred by her.

9. The policy issued by the Insurance Company in the name of the original opponent no.4 was to take effect from 3-7-1978 and was to subsist till 2nd July 1979. The incident occurred on 3-10-1978 and before that the truck was transferred by respondent no.4 to respondent no.2.

10. Under the circumstances, it is quite clear that the Company could not be made liable in respect of the incident. There is no privity of contract between respondent no.2 and the Company on the one hand and whatever insurable interest respondent no.4 had in the truck, it has lost, when the truck was transferred without the transfer being accepted by the Company by virtue of Sec.103 of the Motor Vehicles Act.

11. The net result therefore, is that the appeal of the Company succeeds. Accordingly, the order of the trial Court in respect of the appellant is set aside and the claim against the appellant Company is dismissed with no order as to costs.

12. With regard to the cross-objections, they are required to be dismissed because the learned trial Judge has considered the requirement of one more operation,

which is in the nature of a corrective surgery. It is the opinion of Dr.Patel, based on the opinion expressed by Dr.Dholakia that knee joint is required to be replaced by an artificial joint and after that operation is performed, the petitioner will be able to follow normal life. The learned Judge has considered the aspect of disablement, as if the disability is to persist for the rest of the life of the petitioner and has granted its pecuniary equivalent with reference to the annual income of the petitioner established on the basis of the income-tax returns. In our opinion, therefore, the reasoning of the learned Judge on the basis of the material placed before him and the conclusion arrived at by him cannot be faulted with.

13. At the time of admission of the appeal, the appellant Company was required to deposit the entire amount awarded by the trial Court. Out of the amount so deposited, a sum of Rs.10,000/- were permitted to be withdrawn by the tribunal and rest of the amount ordered to be invested and the investment was to be so done by the trial Court. The amount thus remaining with the tribunal by way of investment is ordered to be refunded to the appellant Company, original opponent no.3 of the Claim Petition. For the rest of the amount the Insurance Company shall approach the trial Court under Sec.44 of the Civil Procedure Code and on application being made thereunder, the trial Court shall proceed to grant restitution in view of the fact that the order passed against the Insurance Company is set aside in this appeal. The appeal and cross objection stand disposed of accordingly.

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